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No. 83-2166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PHILIP Q. ZAUDERER
Appellant,

vs

OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO,
Appellee,

On Appeal from the Supreme Court of Ohio

BRIEF IN OPPOSITION TO APPELLATE JURISDICTION, OR IN ALTERNATIVE, TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED*

1. May a state, in order to further its substantial state interest in regulating the legal profession and protecting the public, prohibit an attorney from running a newspaper advertisement, irregardless of the accuracy of the statements made therein, which conveys information concerning a particular product alleged to be defective, including medical information concerning which the lawyer may have no expertise, and which solicits person who may have used the particular product to be represented by the attorney?

2. May a state, in order to further its substantial state interest in regulating the legal profession, and to protect members of the public who are not familiar with contingent fee agreements, (a) prohibit the advertising to the public of offers to represent persons on a contingent fee basis, where the public is not informed of the likely costs and other limitations of the contingent fee agreement, and (b) prohibit as misleading the advertisement of contingent fees in criminal cases where attorneys are not permitted to charge contingent fees in such cases?

3. May a Federal Court, consistent with the Tenth Amendment to the United States Constitution and with considerations of comity, require that a state, in a judicial proceeding of that state, require that a state give notice of a charged violation other then the facts constituting the violation and the rule violated thereby, or prohibit a state Supreme Court from taking action based upon judicial notice of matters commonly occurring in its courts of inferior jurisdiction?

*There are no parties to this proceeding other than those listed in the caption.

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Appellant,

vs

OFFICE OF DISCIPLINARY COUNSEL
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Appellee,

JURISDICTION OF THIS COURT

This Court does not have appellate jurisdiction under 28 U.S.C. 1257 (2) and should reject the petition for certiorari under 28 U.S.C. 1257 (3).

In *Mackay v. Nesbitt,* 412 F 2d 846 (1969), the U.S. Court of Appeals for the Ninth Circuit stated that orders of a state court related to discipline and similar matters concerning members of its bar may be reviewed only by the U.S. Supreme Court on certiorari.

The rules sought to be reviewed are not "statutes" within the meaning of 28 U.S.C. 1257 (2). The disciplinary rules of the Code of Professional Responsibility are not statutes (nor are they a part of the Rules for the Government of the Bar of Ohio as stated by Appellant), but rather are rules adopted by the Ohio Supreme Court as part of its inherent and constitutional authority to discipline attorneys (Ohio

Constitution; Article IV, Sec. 2), and promulgated through its official reports. See for example, as to DR 2-101 (A) and (B), 23 Ohio St. 2d 1; 44 Ohio St. 2d; p. xxi; 52 Ohio St. 2d p. xxix; 57 Ohio St. 2d p. xxi; and 59 Ohio St. 2d p. xix.

This case is distinguishable from *Lathrop v. Donohue,* 367 U.S. 820 (1961), in that Ohio has no intergrated bar, and any rules promulgated for the regulation of the bar are adopted by the judiciary alone pursuant to its constitutional authority under Ohio Constitution; Article IV, Sec. 2.

This Court should not exercise it certiorari jurisdiction because there is no substantial federal question which outweighs the substantial interest of the State of Ohio in regulating the attorneys who are admitted to the practice of law in its courts.

STATEMENT OF THE CASE

Appellant's statement of facts is substantially accurate, though in many instances irrelevant.

The Supreme Court of the State of Ohio has original and exclusive jurisdiction over "(a)dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law." Ohio Constitution, Article IV, (2) (g).

The Ohio Supreme Court has, pursuant to its authority, adopted Rules for the Government of the Bar of Ohio. Rule V of those Rules sets forth disciplinary procedure, and provides for a system of concurrent jurisdiction between certified local bar associations and Disciplinary Counsel for the filing of all complaints alleging professional misconduct, with exception of complaints alleging violations of DR 2-101 and DR 2-102 (A) and (B). Disciplinary Counsel has sole jurisdiction as to violations of DR 2-101 and DR 2-102 (A) and (B).

The Code of Professional Responsibility was originally adopted, without the Preface to the Code, by the Ohio Supreme Court, effective October 5, 1970, 23 Ohio St. 2d 1. The Preface to the Code of Professional Responsibility was adopted by the Supreme Court of Ohio effective July 15, 1974, 38 Ohio St. 2d p. xxv. The Preface states, *inter alia:*

> "The Disciplinary Rules, unlike the Ethical Constitutions, are mandatory in character. The Disciplinary Rules state the minimum level conduct below which no lawyer can fall without being subject to disciplinary action."

The Board of Commissioners on Grievances and Discipline of the State of Ohio has, pursuant to Gov. Bar Rule V (2), jurisdiction to "receive, entertain, inquire into, take evidence, preserve the record, make findings and submit recommendations to" the Ohio Supreme Court concerning

attorney misconduct. The Board is composed of seventeen attorneys who are only nominally compensated for services provided on behalf of the Board. Certified local bar associations, or their members, with trivial exceptions, receive no compensation for services performed in investigating or prosecuting complaints. The expenses of the Office of Disciplinary Counsel, and other expenses incurred by the Board of Commissioners in investigating, hearing, and reporting matters to the Ohio Supreme Court, are funded by registration fees required to be paid by attorneys, who must register and pay the fees in order to be permitted to practice law in Ohio (Gov. Bar Rule VI).

The Rules for the Government of the Bar of Ohio provide for a hearing on disciplinary complaints before a hearing panel consisting of three (3) members of the Board of Commissioners, a report to, and review by, the Board if misconduct is found, and a certified report to the Ohio Supreme Court if the Board finds misconduct. Disciplinary action may only be taken by order of the Ohio Supreme Court.

Respondent placed the advertisements contained on pages five (5) and six (6) of his jurisdictional statement. It is uncontroverted that the Dalkon Shield advertisement violates Ohio Disciplinary Rule 2-101 (B), in that it conveys information not permitted to be conveyed under that rule and contains an illustration not permitted under that rule. It was stipulated before the hearing panel that the facts contained in the advertisement were not misleading, false, fraudulent or deceptive, though both the Board of Commissioners and the Ohio Supreme Court found that the advertisement was as a matter of law misleading because of the statement concerning contingent fees, and thus violated DR 2-101 (A).

It is likewise uncontroverted that Appellant placed the advertisements, that the Dalkon Shield advertisements contained language inviting people to contact Appellant, and that he accepted employment by persons who did contact him as a result of the advertisement. The Board and the Ohio

Supreme Court thus found violations of DR 2-103 (A) and DR 2-104 (A), concerning solicitation.

The Ohio Supreme Court and the Board aiso found a specific violation of DR 2-101 (B) (15) in that the terms of the contingent fee agreement proposed to be entered into were not disclosed in the advertisement.

ARGUMENT

It is Appellee's contention, for purposes of jurisdiction on appeal, that the Disciplinary Rules of the Code of Professional Responsibility are not statutes within the meaning of 28 U.S.C. 1257 (2). In the alternative, if the Court rejects this contention, or if the Court accepts this contention but grants certiorari, then it is Appellee's contention that the Disciplinary Rules of the Code of Professional Responsibility are statutory in character and designed to regulate the conduct of attorneys for the protection of the public and all citizens. *Supreme Court of Virginia v. Consumer's Union*, 446 U.S. 719 (1980), at page 731.

State statutes, in proceedings in which they are sought to be enforced against persons charged with violating them, do not have to be proven or justified by evidence submitted in those proceedings. The existence of a statute governing a matter is not an issue of disputed fact. The normal test as to the validity of the statute is whether there was a rational basis for the promulgating body to reach the conclusion it reached. The State of Ohio has a rational basis for the disciplinary rules it has adopted.

Neither *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), nor *In re RMJ*, 455 U.S. 191 (1982), speak to the issue of advertisements which solicit clients for a particular matter involving a particular product. Both cases involved advertisements giving very general information concerning the attorney and directed to areas of practice or fees. *In Re*

Primus, 436 U.S. 412 (1978), cited by Appellant, concerned political speech, not speech undertaken for pecuniary gain as here. *Ohralik v. Ohio State Bar Association,* 436 U.S. 447 (1978), involved in-person solicitation and does not speak to solicitation undertaken through newspapers of general circulation and referring to an already known defendant and factual situation. In the absence of a clearly controlling federal constitutional right, Ohio may, and must, because of its substantial state interest in regulating the legal professional and in protecting its citizens, promulgate and enforce rules capable of being enforced by its regulatory system.

A. A SUBSTANTIAL STATE INTEREST JUSTIFIES CONTENT RESTRICTIONS ON ATTORNEY ADVERTISING

Where First Amendment rights of commercial speech are involved, the test of *Central Hudson Gas & Elect. Corp. v. Public Service Commission,* 447 U.S. 557 (1980), must be met. Thus the regulation must concern lawful activity, there must be a substantial government interest, the regulation must directly advance the interest asserted, and the regulation must not be more extensive than necessary to achieve that interest.

The extensiveness of the regulation, so far as commercial speech is concerned, is to be considered as it applies to the person challenging the resolution, and not to all persons who might conceivably challenge it for entirely different reasons. The First Amendment overbreadth doctrine, in other words, does not apply to commercial speech cases involving attorney advertising. *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), at page *380.*

The State of Ohio has a substantial interest in regulating the legal profession. Ohio's system of regulation of the legal profession is a system that involves both full time counsel,

paid through registration fees, and substantial effort on the part of attorneys who are members of the private bar and who are volunteers who may not be compelled by the state to perform legal services without compensation. No system of regulation which is dependent upon the volunteer services of a substantial number of persons for its effective functioning can realistically expect persons to voluntarily cooperate in the enforcement of rules with which they have substantial disagreement. The State of Ohio, then, has a substantial interest in both: (1) enforcing its disciplinary rules for the benefit of the public, and (2) promulgating disciplinary rules with which a large number of Ohio's attorneys are in substantial agreement.

The State of Ohio, in promulgating its rules concerning attorney advertising and solicitation, could rationally conclude that: (1) substantial effort on the part of the private bar is necessary for its regulatory system to function effectively, and (2) the private bar, since it has through its formal organizations traditionally called for and promulgated restrictions on attorney advertising and solicitation substantially similar to those involved in DR 2-101 (A) and (B), DR 2-103 (A), and DR 2-104 (A), would be less likely to support a regulatory system in which those or similar rules were not enforced.

The State of Ohio, moreover, could rationally conclude that the only kind of advertising rule which it can effectively enforce with its system of regulation is one that specifies what lawyers may advertise and prohibits all other kinds of information. Ohio is a large state with a large and diverse population of both attorneys and potential clients. Attorneys in the state may practice in the areas of law that vary from the simple and relatively routine to the complex and sophisticated. The persons to whom advertising is communicated vary from the simple, uneducated and uninformed, to the most sophisticated and highly educated. What may be misleading to one person may be informative to another, and vice versa. Given the complexity of modern law, the diffi-

culty in some specialities of law in determining whether a statement of law, much less of fact, is misleading, and the widespread availability of sophisticated marketing and research, and thus "targeting," techniques for potential recipients of legal advertising, the State of Ohio could rationally conclude that it does not have available to it sufficient resources to police legal advertising that has no governing standard other than whether it is false or misleading. Accordingly, it is rational for the State of Ohio to adopt a regulatory standard that specifies what may be communicated, on the ground that that can be more easily verified as true or not, and prohibits other information from being communicated.

The State of Ohio, in other words, can and has rationally concluded that an advertisement which (1) conveys information about a particular product made by a particular manufacturer (2) conveys medical and other information concerning the danger caused by that product which cannot be readily verified from usually available sources of information (3) informs the public that other clients are being represented in similar cases and (4) invites the reader to hire the attorney; may be prohibited in the public interest of regulating the legal profession.

Lawyers who advertise do so to attract clients. There is often a substantial pecuniary incentive in such instances to attract those clients. Where information (such as that obtained in depositions conducted by an attorney representing other clients) is in the control of the advertising attorney, there may be no way to judge, or even determine, if advertised information is accurate.

Given the substantial pecuniary interest of attorneys in attracting clients, and given the inevitably selective nature of advertising, the process of advertising by attorneys is not a reliable process for conveying accurate information to the public. In the instant case the medical information conveyed was available through other sources. Under Ohio's rules, attorneys remain free to convey information, including information concerning legal rights, in a non-advertising context in which the attorney does not accept employment as a result of communicating that information.

The issue involved in attorney advertising is not simply whether the public can benefit in receiving information that could be coming through such ads. The issue is also whether, given the availability of this information through other sources, given the ability of lawyers to communicate legal information in a variety of other circumstances in which no fee will be received as a result of the communication, and given the inherent unreliability of information conveyed in a context in which there is substantial opportunity for pecuniary gain and no reliable process to review the accuracy of that information, a state may rationally conclude that its interest in regulating the legal profession in an effective manner outweighs the interest of particular members of the public in receiving certain information that may be useful to them.

The State of Ohio has concluded that it may prohibit such communication in the interest of protecting the public. That conclusion is rational and, accordingly, Appellant's challenge to Ohio's disciplinary rules should be dismissed.

B. THE COMMUNICATION OF INFORMATION CONCERNING CONTINGENT FEES

Members of the public cannot be presumed to know what is meant by "contingent fee." Most people would not know, for example, that under most contingent fee agreements there can be substantial expenses of suit incurred by the client. Any statements such as "If there is no recovery, no legal fees are owed," or "Full legal fee refunded if convicted," the State of Ohio can rationally conclude, are misleading unless the essential terms of the agreement are conveyed to the public. It is not necessary to conclude from this that lawyers must specify in detail the terms and the costs in-

volved. At a minimum, however, the State may require that (1) potential clients not be left to believe that there are *no* costs involved if the client loses the case, and (2) attorneys not advertise that they are available to take criminal cases on a contingent fee basis when they may not legally do so.

C. THE USE OF ILLUSTRATIONS

The State of Ohio may rationally prohibit the use of illustrations other than the scales of justice or the attorney's picture. While the state may almost certainly not do so on the grounds that all such illustrations are inherently misleading (as Appellant mistakenly states the State of Ohio has done), the state may rationally conclude that illustrations in attorney advertising are so inherently subject to abuse and manipulation through emotional or subconscious appeals as to be incapable of effective regulation through rational legal process.

The scales of justice are generally accepted symbols of the rational balancing process of legal reasoning. And while the use of a lawyer's picture may not convey much information concerning the lawyer's legal ability, the state can rationally conclude that people seeking public approval have the right to communicate to the public what they look like.

D. THE DUE PROCESS ARGUMENT

There is no burden on a state, in a proceeding in which it seeks to enforce a statute or rule, to justify the existence of that statute or rule or to introduce evidence as to why a statute is reasonable. There is, similarly, no requirement under the Federal Constitution that a state have a particular theory as to why a statute applies, or which prohibits a state court from taking judicial notice of matters of common knowledge in its lower courts.

This is not, as in *Durham v. Brock,* 498 F. Supp. 213 (M.D. Tenn., 1980) a case in which a challenge has been brought against a regulation in a hearing conducted for the purpose of determining the validity of the regulation. It would be an impossible burden for the state, in any hearing brought under a particular statute, to require that the state must not only establish the facts which constitute a violation of the statute, but the validity of the statute itself. This argument assumes, incorrectly, that the law which governs a matter is somehow not the law, but a fact which must be proven like any other. The alleged unconstitutionality of a disciplinary rule is not a defense to its violation. *In the Matter of Felmeister,* 471 A. 2d 775 (N.J., 1984).

It was not, as Appellant states, changing *theories* in midstream that was condemned by this Court in *In re Ruffalo,* 390 US 544 (1968). In that case an attorney was charged with twelve counts of misconduct. After the Respondent testified, a thirteenth count was added. The Ohio Supreme Court found the attorney guilty of the thirteenth and one other count and imposed discipline. That order became final and was not reviewed by the U.S. Supreme Court. An action was then brought seeking discipline in the federal court system. The Federal Courts, relying on the Ohio findings, found sufficient evidence to justify only the thirteenth court, for which there was no prior notice. This Court held that to be insufficient to justify discipline, since there was no due process with respect to the thirteenth count, and reversed the federal discipline.

The instant case does not involve the addition of another count after testimony. The amended complaint of Appellee, filed December 17, 1982, contained nine counts alleging that by placing the advertisements Appellee had violated the following disciplinary rules: DR 2-101 (A) and (B), DR 2-101 (B) (15), DR 2-103 (A) and DR 2-104 (A). Both the Board and Supreme Court of Ohio found these rules had been violated. Appellant had notice that he was being charged with

violating them, and of the facts (the advertisements) which constituted the violations.

The function of a hearing panel under Ohio's System of disciplinary procedure is to determine facts and make recommendations based upon both the knowledge and experience of the panel's members and the evidence presented. Such a panel acts in an adjudicative capacity and may take judicial notice in accordance with Ohio's Rules of Evidence, Rule 201 (B). It remains the function of the courts to state the law, and the fact that the Board of Commissioners, or the Appellee, may have had a particular theory as to why a rule has been violated, creates no due process issue.

Appellant would be unlikely to argue before this court that because the prosecution has not established that a criminal defendant is being punished for reasons of "deterence" or "rehabilitation," the defendant should not be punished at all. Nor is it a plausible defense to a speeding charge that the prosecution has not established whether the theory justifying the restriction is to protect other drivers or to conserve gasoline.

Statutes and regulations generally involve several purposes or theories which might justify their existence. So long as a person charged with violating the rule is given notice of the rule, and of the facts which are alleged to violate it (in this case the advertisements) there is no issue of procedural due process. Similarly, where advertisements on their face are a violation of duly promulgated rules regulating either the content or manner of the advertisement, there is no factual or evidentiary issue presented. Either the rules are valid law or they are not.

CONCLUSION

This Court held in *Bates* that attorney advertising may not be subjected to blanket suppression. In *RMJ* this Court held that advertising by attorneys may not be restricted so as to require that they may advertise their availability to practice in an area of law that must be described by particular words —ie, "tort law" or "property law," but may not be described by other equally descriptive words such as "personal injury" and "real estate law." Neither case speaks to the issue of an advertisement concerning a particular matter involving a particular party and product. This Court in *RMJ* went on to say, moreover, that the state may regulate both communications that are misleading and communications that are not misleading where there is a substantial state interest in doing so. 455 U.S. 191 at 203.

There is no due process issue involved in Appellant's case. Appellant was given prior notice of the conduct which was alleged to violate the rules and of the rules alleged to be violated.

The Supreme Court of Ohio has found that the advertisements were misleading, in violation of DR 2-101 (A). Where the state has promulgated a rule permitting advertising of contingent fee rates only when certain information about costs and expenses are included, it may determine that as a matter of law the failure to provide any information concerning costs and expenses in an advertisement offering contingent fees, or information as to the realities of drunken driving charges in what is generally a plea bargaining situation, is misleading to the general public.

Respondent conduct clearly violates, on the face of the advertisements, the language of DR 2-101 (B), DR 2-103 (A), and DR 2-104 (A), (the language of which is contained in Appellant's Appendix E). Unless words in rules do not mean what they say, Appellant has violated these rules. Respondent could clearly be given a public reprimand for any one of

these violations and that is what the Supreme Court of Ohio, after reviewing the matter, has chosen to do. Accordingly, the Order of that Court should stand, and this court should not take jurisdiction.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Brief in Opposition to Appelliate Jurisdiction and to Petition for Certiorari have been served upon the Appellant's Counsel, Alan Morrison, Public Citizen Litigation Group, Suite 700, 2000 P Street, N.W., Washington, D.C. 20036, by United States mail, first class postage prepaid, on this ____ day of July, 1984. I further certify that all parties to be served have been served.

/s/

A.J. GAGLIARDO
Counsel of Record for Appellee

APPENDIX

OHIO CONSTITUTION ARTICLE IV SEC. 2

§ 2 The supreme court.

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) the supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases in which the death penalty has been affirmed;

(iii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained.

(c) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(d) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(e) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor. (Amended May 7, 1968.)

RULE V
DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on July 1, 1983, and shall apply to all pending cases.

(1) Creation of Board of Commissioners on Grievances and Discipline of the Bar. There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline of the Bar. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. The members of such Board shall be appointed from each of the Ohio Appellate Districts as follows: District 1, two members; District 2, one member; District 3, one member; District 4, one member; District 5, one member; District 6, two members; District 7, one member; District 8, three members; District 9, one member; District 10, two members; District 11, one member; and District 12, one member. Inital appointments under this rule shall be made as follows: Members appointed from former districts one (1), four (4) six (6), seven (7), eleven (11), twelve (12), thirteen (13), and fifteen (15), with remaining terms shall continue to serve for the same term for the new districts one (1), six (6), two (2), ten (10), nine (9), eight (8), eleven (11), and seven (7), respectively. The member appointed from new district three (3) shall be selected, by majority vote of the Supreme Court, from among the members appointed from former districts three (3) and sixteen (16). The members appointed from new district four (4) shall be selected, by majority vote of the Supreme Court, from among the members appointed from former district eight (8) and seventeen (17). The member appointed from new district five (5) shall be selected, by the majority vote of the Supreme Court, from among the members appointed from former districts nine (9) and ten (10). The members selected from

districts three (3), four (4) and five (5) shall continue to serve their present term. The remaining members shall be appointed by this Court for the following terms: One (1) member from district one (1) for the term ending 12-31-83; one (1) member from district six (6) for the term ending 12-31-85; one (1) member from district eight (8) for the term ending 12-31-84; one member from district ten (10) for the term ending 12-31-85; one member from district twelve (12) for the term ending 12-31-85. Thereafter the term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment with each member eligible for reappointment to one succeeding term. Any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by an appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Comissioners and of panels thereof. The Board of Commissioners shall meet in Columbus, Ohio, the first Friday after the second Monday during the months of February, April, June, August, October and December. The Chairman or the Secretary of the Board may call additional meetings of the Board when necessary.

(2) Jurisdiction of Board. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, preserve the record, make findings and submit recommendations to this Court as hereinafter provided:

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension from the practice of law, or

(b) concerning the mental illness of any attorney and counselor at law, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State, or

(d) upon reference by this Court of conduct by an attorney affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court or a breach of these rules but did not take place in the presence of the court or a member thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise; provided that nothing herein shall be construed as limiting or affecting the plenary power of this Court to impose punishment with reference either to contempts or breaches of these rules committed in its presence or the plenary power of any other court with reference to contempts committed in its presence.

(3) Referral for Investigation. The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to Disciplinary Counsel any matters coming to its attention for investigation, as hereinafter provided.

There is hereby created the position of Disciplinary Counsel. The Supreme Court shall appoint a Disciplinary Counsel and such assistants as necessary who shall be attorneys at law admitted to practice in this state and who shall not engage in the private practice of law while serving in that capacity.

In the event that a Grievance Committee of a local association determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Disciplinary Counsel, the Chairman of the

Grievance Committee of the local bar association may direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of the investigation to the committee which requested it.

All complaints alleging violations of DR 2-101, and DR 2-102(A) and (B) shall be referred to or filed with Disciplinary Counsel. Disciplinary Counsel shall have exclusive authority to investigate such complaints, file formal complaints with the Board and prosecute formal complaints filed with the Board. All formal complaints filed with the Board alleging violation of DR 2-101 and DR 2-102(A) and (B) shall be filed by the Disciplinary Counsel in the name of Disciplinary Counsel as relator. Proceeding in such matters shall be conducted in the same manner as all other disciplinary proceedings provided for in this rule.

The Disciplinary Counsel shall appoint, with the approval of the Supreme Court, staff personnel as required to satisfactorily complete investigation of matters referred to him pursuant to these rules or filed with him pursuant to Rule II of the Supreme Court Rules for the Government of the Judiciary. The Supreme Court shall fix the compensation of the Disciplinary Counsel and personnel employed by the Disciplinary Counsel and provide office facilities, furnishings, stationery, equipment and office supplies for the Disciplinary Counsel.

Funds for the operation of the Disciplinary Counsel's office, including compensation of the Disciplinary Counsel and staff, shall be provided from the registration fees collected pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio.

The Disciplinary Counsel shall be under the supervision of and responsible to the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar and the Board of Commissioners on Grievances and Discipline of the Judiciary created in Rule II of the Supreme Court Rules

for the Government of the Judiciary, and shall file annually with the Supreme Court and the Secretary a report of the activities and accomplishments of his office and a report of the expenses of operation of his office.

(4) Application of Rule; Authority and Duty of Bar Committees and Disciplinary Counsel. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law; all proceedings for the discipline of such attorneys and counselors at law, and persons under suspension or disbarred from the practice of law; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provision of this rule. Disciplinary Counsel and any committee authorized by any regularly organized local bar association shall investigate any matter referred to them or which comes to their attention, and may cause a complaint to be filed pursuant to this rule in cases where they find reasonable cause to believe that misconduct has occurred or that a condition of mental illness exists.

The investigation of complaints with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law shall be conducted by Disciplinary Counsel or the Grievance Committee of a local bar association. A local bar association may provide by its constitution, regulations or rules, for the appointment of lay persons as members of its grievance committee, provided that the majority of such committee shall consist of attorneys at law admitted to the practice of law by this Court.

The investigation of complaints shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within thirty days thereafter. Extensions of time for completion of the investigation may be granted upon written

request, and for good cause shown, by the Secretary or Acting Secretary, of the Board of Commissioners on Grievances and Discipline of the Bar. If the investigation is not completed within sixty days from the date of filing the complaint and no written request has been made for an extension of time, the matter under investigation shall be referred to the Disciplinary Counsel. No extension of time shall be granted beyond one-hundred-fifty days from the date of receipt of the complaint. If an investigation by the Grievance Committee of a local bar association is not completed within one-hundred-fifty days from the date of filing the complaint, the matter under investigation shall be referred to the Disciplinary Counsel.

If a committee or Disciplinary Counsel determines upon investigation of a complaint that the filing of a formal complaint with the Board of Commissioners on Grievances and Discipline of the Bar is not warranted, the complainant shall be notified in writing of that determination.

The Grievance Committee of each local bar association shall file quarterly, by the fifteenth day of January, April, July, and October of each year, with the Disciplinary Counsel a report of the number of complaints made to the committee during the preceding quarter. The report shall specify the types of complaints filed, including commingling of funds, conviction of crime, failure to file income tax returns, failure to protect the interests of a client, soliciting, embezzlement, conversion, failure to account, excessive fees, mental illness and any other type of complaint not herein set forth. The report shall indicate the number of complaints filed, the number pending in each category and the number terminated by action of the committee during the reporting period.

The names of the Chairman of the Grievance Committee of the local bar association shall be reported in writing annually to the Disciplinary Counsel by the President of each local bar association.

The Board of Commissioners or any member thereof, Disciplinary Counsel, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall negelect or refuse so to assist in any such investigation or so to testify.

In the event that a Grievance Committee of a local bar association or Disciplinary Counsel shall in the case of a disciplinary investigation as provided for in this rule seek determination of a procedural question, the principal officer of a local bar association or the Chairman of its Grievance Committee or Disciplinary Counsel shall direct a written inquiry to the Chairman of the Board of Commissioners by filing it with the Secretary of the Board. Upon receipt of such written request, the Chairman of the Board of Commissioners may refer the inquiry to a panel of three members of the Board. The three-member panel shall be selected by the Secretary of the Board of Commissioners. The written request shall be documented with such facts, citations, statutory references and other written data that may be of assistance to make a determination of the matter presented. After the panel has completed its study of the problem presented, the panel shall make a written recommendation as to solution of the question. Upon receipt of such report and recommendation, the Chairman of the Board of Commissioners shall promptly convene the members of the Board who shall approve, reject, modify or otherwise dispose of the panel's recommendation. In the event that the question presented requires immediation attention for decision, the Chairman of the Board has the discretionary power to waive reference of the question to a panel, but shall submit the question or

questions presented to the entire Board for its decision.

Bar associations certified by the Supreme Court in accordance with Section (5)(c) of these rules may be reimbursed from the funds created by the registration fees collected, pursuant to Rule VI, for direct expenses incurred by such bar association in performing the obligations imposed on it by these rules, which shall be limited to costs for depositions, transcripts, copies of documents and for necessary travel expenses incurred outside the county of the local bar association. There shall be no reimbursement for the cost of any full-time or part-time investigators or time of other bar association personnel or attorneys in discharging these obligations. Reimbursement shall be made upon submission to the Disciplinary Counsel of receipted copies of invoices for the aforesaid purposes and upon the approval of the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar.

(5) Definitions.

(a) Misconduct. Misconduct shall mean any violation by an attorney of any provision of the oath of office taken upon admission to the practice of law in this State or any violation of the Code of Professional Responsibility as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension from the practice of law, or the commission or convinction of a crime involving moral turpitude.

(b) Mental Illness. Mental illness shall mean the condition defined in R.C. 5122.01(A).

(c) Grievance Committee. Grievance Committee shall mean that committee designated by a local bar association, which association is certified by the Supreme Court of Ohio to be responsible for the investigation of allegations of misconduct by attorneys and mental illness affecting attorneys and the initiation of complaints as a result thereof under the provisions of these rules.

(6) Manner of Discipline. Each attorney and counselor at

law found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) suspension for a period of one year from the practice of law, or

(d) a public reprimand.

(7) Effect of Discipline. A person disbarred or a person who has voluntarily surrendered his license to practice shall never thereafter be readmitted to the practice of law in this State. A person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been suspended for a period of one year from the practice of law or who has been publicly repremanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) Automatic Indefinite Suspension from the Practice of Law for Conviction of an Offense Involving Moral Turpitude.

(a) Any attorney admitted to the practice of law in the State of Ohio who is convicted in this State of an offense, other than a petty offense as defined by the Ohio Rules of Criminal Procedure, or who is convicted of an equivalent offense under the laws of any other jurisdiction, shall be subject to an automatic indefinite suspension.

(i) A certified copy of the judgment entry of conviction of an attorney of an offense defined in this rule shall be transmitted forthwith by the judge entering such judgment to the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar. A certified copy thereof

shall also be transmitted forthwith to Disciplinary Counsel or the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in this State, wherein the attorney practices law or resides.

(ii) Upon receipt from any source of a certified copy of the judgment entry of conviction by the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar, the Secretary shall promptly cause such entry to be submitted to the Supreme Court whether the conviction resulted from a plea of guilty or a plea of nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(iii) The Court may enter such order as it deems appropriate, including an order immediately and indefinitely suspending the attorney from the practice of law.

(b) A certified copy of a judgment entry of conviction of an offense shall be conclusive evidence of the commission of that offense in any disciplinary proceedings instituted against an attorney based upon the conviction.

(c) Any disciplinary proceeding instituted against an attorney based upon a conviction of an offense shall not be brought to hearing until all appeals from the conviction are concluded.

(d) An attorney suspended under the provisions of this rule or Rule II of the Supreme Court Rules for the Government of the Judiciary shall be reinstated by the Court upon the filing with the Secretary of the Board of Commissioners of a certified copy of a judgment reversing the conviction of the crime. Such reinstatement shall not terminate any disciplinary investigation or proceeding then pending against the attorney.

(e) Duty of Clerk on Entering Order. Upon the entry of an order indefinitely suspending an attorney for conviction of an offense, the Clerk of the Court shall mail certified copies thereof as provided in Section (20) of these rules.

(9) The Complaint; Where Filed; By Whom Signed. A

complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Grievance Committee of any regularly organized local bar association in the State shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed by the President, Secretary, or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel and the local bar association of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(10) Duty of the Board Upon Filing of the Complaint.

(a) Notice to Respondent. The Secretary of the Board of Commissioners shall send a copy of the complaint by certified mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon

counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted, for good cause shown, by the Secretary of the Board of Commissioners.

(b) Mental Illness Suspension. After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination provided in (c) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

(c) Examination. If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(d) Duty of Clerk on Entering Order. Upon the entry of an order suspending an attorney for mental illness, the Clerk of the Court shall mail certified copies thereof as provided in paragraph one of Section (20) and shall change the registration of respondent to inactive status. No publication of such order shall be made but the order shall be a matter of public record.

(e) Termination. Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

(11) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a

formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Secretary of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes. Requests for continuances may be granted by the Chairman of the panel for good cause shown.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(12) Authority of Panel; Dismissal. If the panel finds that the complaint or evidence is insufficient to support a charge of misconduct the panel may order that the complaint be dismissed. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, Disciplinary Counsel, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(13) Referral by Panel. In the alternative, if the panel determines that findings of fact and recommendations for dismissal should be referred to the Board of Commissioners for review and action by the full Board, the panel may submit its findings of fact to the Board of Commissioners and may recommend dismissal in the same manner as provided in the following sections of this Rule V with respect to public reprimand, suspension or disbarment.

(14) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for a period of one year, suspension for an indefinite period, or permanent disbarment is merited,

the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(15) Review by Entire Board of Commissioners. Upon review, said Board of Commissioners may refer the matter back to the panel for futher hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the complaint is dismissed, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(16) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review. If the Board of Commissioners determines that a public reprimand, suspension for a period of one year, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(17) Show Cause Order Issued by the Court to Respon-

dent. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by certified mail.

(18) Response to Order to Show Cause and Objections. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) Answer briefs. Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(20) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order; Duties of Disqualified or Resigned Attorney.

(a) After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, or acceptance of resignation from the practice of law, the Clerk of this Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent attorney (at his last known address), to the Disciplinary Counsel, to the local bar associa-

tion or associations in the county or counties in which such attorney resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio, the United States Court of Appeals for the Sixth Circuit, and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association and by the publisher of the official reports of this Court. Such publication shall include a citation of the case in which the public reprimand was issued.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period or for a period of one year from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association. If any attorney resigns from the practice of law, the Clerk of this Court shall arrange for publication of the order of the Court in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association and by the publisher of the official reports of this Court.

(b) This court shall include in its order disbarring or suspending, for mental illness or disciplinary reasons, an attorney, or in any order pertaining to the resignation of an attorney, a time limit not to exceed thirty days, within which the disqualified attorney shall:

(i) Notify all clients being represented in pending matters and any co-counsel of his disbarment, suspension or resignation and his consequent disqualification to act an as attorney after the effective date of such order, and, in the

absence of co-counsel, also notify the clients to seek legal services elsewhere, calling attention to any urgency in seeking the substitution of another attorney in his place;

(ii) Regardless of any fees or expenses due the attorney, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

(iii) Refund any part of any feeds or expenses paid in advance that are unearned or not paid, and account for any trust money or property in his possession or control;

(iv) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of his disqualification or resignation to act as an attorney after the effective date of such disqualification order, and file a notice of disqualification of counsel with the court or agency before which the litigation is pending for inclusion in the respective file or files;

(v) All notices required by such an order of this Court shall be sent by certified mail and shall contain a return address where communications may thereafter be directed to the disqualified attorney;

(vi) Within the time limit prescribed by this Court the disqualified attorney shall file with the Clerk of this Court and the Disciplinary Counsel an affidavit showing compliance with the order entered pursuant to this rule and proof of service of notices required by said order. Such affidavit shall also set forth the address where the affiant may receive communications, and said offices shall be kept advised of any later change in address by the disqualified attorney;

(vii) A disqualified attorney shall retain and maintain a record of the various steps taken by him pursuant to the order entered by this Court so that, upon any subsequent proceeding instituted by or against him, proof of compliance

with the order will be available for receipt in evidence.

(c) Whenever an attorney is suspended for mental illness, cannot be found in the jurisdiction for a period of sixty days or more, dies, refuses to meet or work with a significant number of clients for a period of sixty days or more, or fails to comply with Section (b) of this rule, and no partner, executor or other responsible party capable of conducting the attorney's affairs is available and willing to assume appropriate responsibility the Disciplinary Counsel may appoint an attorney or attorneys or a local bar association to inventory the files of such attorney and to take such action, including action set forth in Section (b) herein, as is necessary to protect the interest of clients of such attorney. Upon approval by the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar, Disciplinary Counsel may allow reasonable fees to be paid to such appointed attorney or attorneys from the registration fees collected pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar. An attorney or bar association so appointed shall not, except as necessary to carry out the order of appointment by the Disciplinary Counsel, disclose any information contained in files so inventoried without the written consent of the client to whom such file relates. Such attorney may not represent that client.

(21) Proceedings Private; Exceptions. All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) where the Respondent shall request in writing that they be public, or

(b) where the Respondent by voluntary act waives privacy of the proceedings, or

(c) where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or suspension for a period of one year, or

(d) where any disciplinary matter is heard by the

Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(22) Suspension for One-Year Period; Reinstatement. At the expiration of a suspension for a period of one year, the Respondent shall be reinstated to the practice of law, upon application by the Respondent. Said application shall be in writing and filed with the Clerk of this Court. It shall indicate the date such suspension was ordered, shall include an affidavit by Respondent indicating whether any formal disciplinary proceedings are pending against said Respondent, and request reinstatement pursuant to this rule. This Court shall order said Respondent reinstated, provided that all costs of the proceedings as ordered by the Court have been paid, that the Respondent has complied with the order of suspension, and that no formal disciplinary proceedings are pending against Respondent. The Clerk of this Court shall provide notice of such reinstatement to all persons or organizations who received copies of the disciplinary order of this Court ordering Respondent's suspension.

(23) Petition for Reinstatement. No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(24) Contents of Petition for Reinstatement. Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the Petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(25) Costs to be Deposited with Petition for Reinstatement. Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(26) Requisites for Reinstatement. No person shall be reinstated unless he has established by clear and convincing evidence that he possesses all of the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such

case the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule I of the Supreme Court Rules for the Government of the Bar of Ohio shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

(27) Petition for Reinstatement Referred to Board of Commissioners. Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(28) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court From Denial of Petition by Board of Commissioners. The Secretary of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (24) (c). Such hearing shall be public. Any interested person, any member of the Bar, and Disciplinary Counsel may appear before the hearing panel in support of or in opposition to the petition.

In the event that the Grievance Committee of a local bar association referred to in Section (24) of this rule determines that matters relating to petitioner's qualifications for rein-

statement are sufficiently serious and complex as to require the assistance of Disciplinary Counsel, the chairman of such committee shall direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of his investigation to the committee which requested it.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing of such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (24) (c) shall have ten (10) days from receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(29) Manner of Service. Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by certified mail.

(30) Quorum of Panel or Board. A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(31) Clerk is Agent for Service of Notices on Nonresident Attorney. Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law, pursuant to this rule.

(32) Manner of Service on Clerk; Record of Such Service Not a Public Record. All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by certified mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the services, upon said Clerk of this Court, addressed to such Respondent at his last known address. The receipt indicating the certified mail number shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(33) Power to Issue Subpoenas. In investigations and proceedings under this rule, upon application by Disciplinary Counsel, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a complaint under Section (9) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before Disciplinary Counsel, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(34) May Order Depositions. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this state in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

(35) Effect of Refusal to Testify. The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(36) Rules of Evidence. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(37) Docket of Complaints. The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(38) Board May Prescribe Rules. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(39) Rule to be Liberally Construed. The process and procedure under this rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule. To the extent that application of this amended rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended rule became effective shall continue to apply.

RULE VI
REGISTRATION OF ATTORNEYS

(1) Every attorney at law admitted to the practice of law in the State of Ohio shall file with the Clerk of this Court a Certificate of Registration together with a registration fee of Fifty Dollars ($50.00) per year payable biennially, upon a form to be furnished by the Clerk, said sum to be used for investigation of complaints of alleged misconduct pursuant to Section (3) of Rule V of these rules, and Rule II of the Supreme Court Rules for the Government of the Judiciary, alleged unauthorized practice of law and such other purposes deemed necessary by the Supreme Court of Ohio for the Government of the Bar and of the Judiciary of Ohio.

(2) The Certificate of Registration shall be filed and the registration fee paid on or before September 1, 1983, and shall be for the period of September 1, 1983 to August 31, 1985.

(3) Thereafter, in each odd-numbered year, a new Certificate of Registration shall be filed and the registration fee paid on or before September 1 of that year.

(4) Persons admitted to the practice of law in this State between biennial registration dates shall file a Certificate of Registration at the time of admission and pay a fee of One Hundred Dollars ($100.00), unless such admission and registration occurs during the second year of the biennial registration period, in which event the fee shall be Fifty Dollars ($50.00).

(5) Every attorney admitted to the practice of law in another state but not in Ohio who performs legal services in this State solely for his employer as a full-time employee shall also file a Certificate of Registration and pay the fee as required by the foregoing sections of this rule. Said registration shall continue in force only so long as such attorney is so employed.

(6) An attorney who has not filed a Certificate of Registration and paid the required fee who practices law or holds himself out as authorized to practice law or who holds judicial office in this state shall be subject to disciplinary proceedings pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio or Rule II of the Supreme Court Rules for the Government of the Judiciary of Ohio.

(7) Any attorney admitted to the practice of law in Ohio may acquire inactive status by making application to the Clerk for exemption from payment of the registration fee at the time of filing his Certificate of Registration. Such inactive attorney shall not be entitled to practice law nor hold himself out as authorized to practice law nor hold judicial office in this State until such time as he requests and is granted reinstatement to active status.

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JUDICIAL NOTICE

Rule 201

JUDICAL NOTICE OF ADJUDICATIVE FACTS

(A) Scope of Rule. This rule governs only judical notice of adjudicative facts; i.e., the facts of the case.

(B) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(C) When Discretionary. A court may take judicial notice, whether requested or not.

(D) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(E) Opportunity to be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(F) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(G) Instructing Jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.